

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

<b>GALLATIN RIVER COMMUNICATIONS</b>	)	
<b>L.L.C. D/B/A CENTURYLINK</b>	)	
	)	
<b>Petition for Arbitration Pursuant to</b>	)	
<b>Section 252(b) of the Communications Act</b>	)	
<b>of 1934, as amended by the</b>	)	<b>Docket No. _11-0567</b>
<b>Telecommunications Act of 1996</b>	)	
<b>To Establish the Rates, Terms and</b>	)	
<b>Conditions of Interconnection with</b>	)	
<b>NTS Services Corp.</b>	)	

**CENTURYLINK’S REPLY IN SUPPORT OF  
MOTION TO STRIKE ISSUES RAISED IN NTS RESPONSE**

Gallatin River Communications L.L.C. d/b/a CenturyLink (“CenturyLink”), by and through its counsel, submits the following reply in support of its motion to strike the six new issues NTS Services Corp. (“NTS”) has attempted to raise in its response to CenturyLink’s petition for arbitration. For the reasons that follow, CenturyLink’s motion to strike should be granted.

In its opposition to CenturyLink’s motion to strike, NTS does not dispute the basis for granting the motion. First, NTS concedes that only “open issues” in the negotiations may be arbitrated under Section 252 of the Act.<sup>1</sup> Second, NTS concedes that, of the six

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<sup>1</sup> Under the Act, the Commission may only arbitrate “open issues” that have not been resolved through negotiation. Section 252(b)(1) provides that during the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, either party to the negotiations “may petition a State commission to arbitrate *any open issues*.” (emphasis

new issues it seeks to arbitrate, only the issue of tagging and labeling loops was raised during the negotiations as an open issue to be negotiated. NTS does not contest that the issue was resolved when NTS accepted CenturyLink's proposed charge. (Affidavit of Tommy Fields, ¶4, attached to Motion to Strike). Third, NTS concedes that during the negotiations, it never identified the five remaining new issues in its response as open issues to be negotiated. Thus, they were never the subject of any negotiations.

NTS makes a number of erroneous arguments to oppose CenturyLink's motion. First, NTS argues without any supporting authority that CenturyLink's motion fails to meet some unidentified legal standard. NTS asserts that only immaterial issues that would delay a proceeding, unnecessarily expand discovery, or lead to irrelevant evidence at hearing may be stricken. According to NTS, the issues raised by NTS are simply pricing issues for which no additional discovery will be required.

NTS is simply wrong. The new pricing issues NTS seeks to have arbitrated involve nonrecurring charges that are supported by a separate cost study that is not at issue in this proceeding. If NTS is allowed to raise the new pricing issues, the result would be a significantly enlarged proceeding entailing significantly more work for both CenturyLink and Commission Staff. Consideration of these issues can only delay the proceeding and unnecessarily expand discovery. That is why it is essential that the

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added). 47 U.S.C. §252(b)(1); *Coserve Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5<sup>th</sup> Cir. 2003) (“*Coserve*”); 47 U.S.C. §252(b)(1)(authorizing petition to arbitrate “open issues”). The purpose of this requirement is to ensure that the parties identify the issues in dispute and attempt to negotiate them before presenting them to a state commission.

Commission rule now that these issues are not arbitrable because they were not open issues in the negotiations between the parties.

NTS next argues that CenturyLink should not be permitted to independently determine the open issues for arbitration. (NTS Opposition, p. 3). According to NTS, it did not in its April 13, 2011 letter state that it agreed with all of the rates, terms and conditions other than the ten listed in the letter. NTS further claims without support that “NTS” stated in the final calls in July, 2011 that there were additional pricing issues that had been discovered subsequent to the April 13, 2011 letter. NTS does not claim that it ever raised those additional pricing issues in the negotiations.

In fact, NTS’s assertions are unfounded. First, CenturyLink alleged in its verified petition that there were only two open issues at the time it filed its petition and NTS never denied that allegation in its response to the petition. It should be deemed admitted. Second, NTS’s unsupported assertions are refuted by the Affidavit of Tommy Fields submitted in support of CenturyLink’s motion to strike and by the correspondence summarizing the negotiations attached as Exhibit B to CenturyLink’s petition for arbitration. At no time during the negotiations did NTS raise the issues that it now seeks to have arbitrated. NTS had ample time after it received the price list on February 2, 2011 to raise these issues but never did. CenturyLink did not file its arbitration petition until August 3, 2011, the day before the statutory deadline was to expire.

NTS also asserts that CenturyLink was somehow obligated to contact NTS “for any further input from NTS as to what other issues should be addressed in the proceeding.” (NTS Opposition, p. 4). In fact, CenturyLink consistently summarized the

state of negotiations in writing and asked NTS to confirm that CenturyLink had summarized the state of open issues correctly. (*See eg.*, May 18, June 13 and June 17 emails from Tommy Fields attached as Exhibit B to CenturyLink's verified petition for arbitration). Significantly, NTS does not present a single email, piece of correspondence or affidavit in its opposition demonstrating that it ever raised or stated that it would raise issues other than those initially identified in Mr. Twomey's April 13, 2011 letter.

Next, NTS erroneously attempts to distinguish *Coserve* by arguing that the case involved an attempt to include issues in an arbitration petition that Southwestern Bell was not required to, and therefore refused to negotiate. In making this argument, NTS completely ignores the *Coserve* Court's reasoning. First, the Court recognized that issues that are not otherwise arbitrable can be arbitrated if they are first negotiated. The Court stated: "Congress contemplated that voluntary negotiations might include issues other than those listed in §251(b) and (c) and still provided that any issue left open after unsuccessful negotiation would be subject to arbitration by the PUC." *Id.* at 487. Second, the Court holds that compulsory arbitration under Section 252 is not permissible "to obtain arbitration of issues that were not the subject of negotiations." *Id.*

In its conclusion, NTS asserts that granting CenturyLink's motion would effectively approve the charges associated with the six additional issues raised by NTS, that some future CLEC might seek to challenge the charges, and therefore that dealing with these issues now will preserve the Commission's limited resources. In making this argument, NTS has essentially conceded that CenturyLink's motion should be granted. It is precisely because state commissions have limited resources that the Act limits Section

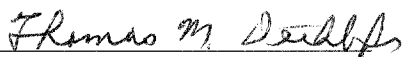
252 arbitrations to “open issues” that the parties have first negotiated but been unable to resolve. Allowing arbitration of issues that were not negotiated leads to tactics such as NTS employs here that raise the cost and burden of the arbitration unnecessarily, in this case, to the detriment of both CenturyLink and Staff. It is noteworthy that NTS did not submit testimony or other support for its position on any of the six new issues it seeks to raise. Undoubtedly, it intends for CenturyLink and Staff to bear the burden of litigating these issues.

### **CONCLUSION**

For the reasons set forth above, the Commission should strike the six issues that NTS raises in its response to the petition on the grounds that these issues are not “open issues” subject to arbitration under the Act.

October 28, 2011

Respectfully submitted,

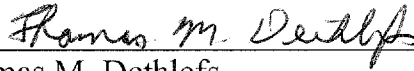
  
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### CERTIFICATE OF SERVICE

The undersigned attorney for Gallatin River Communications L.L.C. d/b/a CenturyLink hereby certifies that he caused copies of the attached Gallatin River Communications L.L.C. d/b/a CenturyLink's Motion to Strike Issues Raised in NTS Response to be served on each of the persons listed below in the manner indicated:

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